

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Opal Joyce Musser  
3620 Portabello Drive  
Modesto, CA 95356

Registered Nurse License No. 222396

Respondent

Case No. 2008-53

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on December 20, 2007.

IT IS SO ORDERED November 20, 2007.



President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
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8 Attorneys for Complainant

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-53

12 OPAL JOYCE MUSSER  
13 3620 Portabello Drive  
14 Modesto, CA 95356

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Registered Nurse No. 222396

16 Respondent.  
17

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H, R.N (Complainant) is the Executive Officer of  
22 the Board of Registered Nursing. She brought this action solely in her official capacity and is  
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
24 by Elena L. Almanzo, Deputy Attorney General.

25 2. Respondent Opal Joyce Musser Opal Joyce Musser (Respondent) is  
26 representing herself in this proceeding and has chosen not to exercise her right to be represented  
27 by counsel.

28 3. On or about April 13, 1972, the Board of Registered Nursing issued

1 Registered Nurse No. 222396 to Opal Joyce Musser (Respondent). The Nurse was in full force  
2 and effect at all times relevant to the charges brought in Accusation No. 2008-53 and will expire  
3 on December 31, 2007, unless renewed.

#### 4 JURISDICTION

5 4. Accusation No. 2008-53 was filed before the Board of Registered Nursing  
6 (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The  
7 Accusation and all other statutorily required documents were properly served on Respondent on  
8 August 17, 2008. Respondent timely filed her Notice of Defense contesting the Accusation. A  
9 copy of Accusation No. 2008-53 is attached as exhibit A and incorporated herein by reference.

#### 10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, and understands the charges and allegations  
12 in Accusation No. 2008-53. Respondent has also carefully read, and fully understands the effects  
13 of this Stipulated Settlement and Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the  
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
16 counsel at her own expense; the right to confront and cross-examine the witnesses against her;  
17 the right to present evidence and to testify on her own behalf; the right to the issuance of  
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
19 reconsideration and court review of an adverse decision; and all other rights accorded by the  
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up  
22 each and every right set forth above.

#### 23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in  
25 Accusation No. 2008-53.

26 9. Respondent agrees that her Registered Nurse is subject to discipline and  
27 she agrees to be bound by the Board of Registered Nursing (Board) 's imposition of discipline as  
28 set forth in the Disciplinary Order below.

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1                   1.       **Obey All Laws.** Respondent shall obey all federal, state and local laws.  
2 A full and detailed account of any and all violations of law shall be reported by Respondent to  
3 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
4 compliance with this condition, Respondent shall submit completed fingerprint forms and  
5 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
6 as part of the licensure application process.

7                   **Criminal Court Orders:** If Respondent is under criminal court orders, including  
8 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
9 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

10                  2.       **Comply with the Board's Probation Program.** Respondent shall fully  
11 comply with the conditions of the Probation Program established by the Board and cooperate  
12 with representatives of the Board in its monitoring and investigation of the Respondent's  
13 compliance with the Board's Probation Program. Respondent shall inform the Board in writing  
14 within no more than 15 days of any address change and shall at all times maintain an active,  
15 current license status with the Board, including during any period of suspension.

16                       Upon successful completion of probation, Respondent's license shall be fully  
17 restored.

18                  3.       **Report in Person.** Respondent, during the period of probation, shall  
19 appear in person at interviews/meetings as directed by the Board or its designated  
20 representatives.

21                  4.       **Residency, Practice, or Licensure Outside of State.** Periods of  
22 residency or practice as a registered nurse outside of California shall not apply toward a reduction  
23 of this probation time period. Respondent's probation is tolled, if and when she resides outside  
24 of California. Respondent must provide written notice to the Board within 15 days of any change  
25 of residency or practice outside the state, and within 30 days prior to re-establishing residency or  
26 returning to practice in this state.

27                       Respondent shall provide a list of all states and territories where she has ever been  
28 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further

1 provide information regarding the status of each license and any changes in such license status  
2 during the term of probation. Respondent shall inform the Board if she applies for or obtains a  
3 new nursing license during the term of probation.

4           **5. Submit Written Reports.** Respondent, during the period of probation,  
5 shall submit or cause to be submitted such written reports/declarations and verification of actions  
6 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
7 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
8 Program. Respondent shall immediately execute all release of information forms as may be  
9 required by the Board or its representatives.

10           Respondent shall provide a copy of this Decision to the nursing regulatory agency  
11 in every state and territory in which she has a registered nurse license.

12           **6. Function as a Registered Nurse.** Respondent, during the period of  
13 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
14 hours per week for 6 consecutive months or as determined by the Board.

15           For purposes of compliance with the section, "engage in the practice of registered  
16 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or  
17 work in any non-direct patient care position that requires licensure as a registered nurse.

18           The Board may require that advanced practice nurses engage in advanced practice  
19 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the  
20 Board.

21           If Respondent has not complied with this condition during the probationary term,  
22 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
23 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
24 grant an extension of Respondent's probation period up to one year without further hearing in  
25 order to comply with this condition. During the one year extension, all original conditions of  
26 probation shall apply.

27           **7. Employment Approval and Reporting Requirements.** Respondent  
28 shall obtain prior approval from the Board before commencing or continuing any employment,

1 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
2 performance evaluations and other employment related reports as a registered nurse upon request  
3 of the Board.

4 Respondent shall provide a copy of this Decision to her employer and immediate  
5 supervisors prior to commencement of any nursing or other health care related employment.

6 In addition to the above, Respondent shall notify the Board in writing within  
7 seventy-two (72) hours after she obtains any nursing or other health care related employment.  
8 Respondent shall notify the Board in writing within seventy-two (72) hours after she is  
9 terminated or separated, regardless of cause, from any nursing, or other health care related  
10 employment with a full explanation of the circumstances surrounding the termination or  
11 separation.

12 8. **Supervision.** Respondent shall obtain prior approval from the Board  
13 regarding Respondent's level of supervision and/or collaboration before commencing or  
14 continuing any employment as a registered nurse, or education and training that includes patient  
15 care.

16 Respondent shall practice only under the direct supervision of a registered nurse  
17 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative  
18 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)  
19 are approved.

20 Respondent's level of supervision and/or collaboration may include, but is not  
21 limited to the following:

22 (a) **Maximum** - The individual providing supervision and/or collaboration is  
23 present in the patient care area or in any other work setting at all times.

24 (b) **Moderate** - The individual providing supervision and/or collaboration is in  
25 the patient care unit or in any other work setting at least half the hours Respondent works.

26 (c) **Minimum** - The individual providing supervision and/or collaboration has  
27 person-to-person communication with Respondent at least twice during each shift worked.

28 (d) **Home Health Care** - If Respondent is approved to work in the home health

1 care setting, the individual providing supervision and/or collaboration shall have person-to-  
2 person communication with Respondent as required by the Board each work day. Respondent  
3 shall maintain telephone or other telecommunication contact with the individual providing  
4 supervision and/or collaboration as required by the Board during each work day. The individual  
5 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-  
6 site visits to patients' homes visited by Respondent with or without Respondent present.

7           **9. Employment Limitations.** Respondent shall not work for a nurse's  
8 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a  
9 traveling nurse, or for an in-house nursing pool.

10           Respondent shall not work for a licensed home health agency as a visiting nurse  
11 unless the registered nursing supervision and other protections for home visits have been  
12 approved by the Board. Respondent shall not work in any other registered nursing occupation  
13 where home visits are required.

14           Respondent shall not work in any health care setting as a supervisor of registered  
15 nurses. The Board may additionally restrict Respondent from supervising licensed vocational  
16 nurses and/or unlicensed assistive personnel on a case-by-case basis.

17           Respondent shall not work as a faculty member in an approved school of nursing  
18 or as an instructor in a Board approved continuing education program.

19           Respondent shall work only on a regularly assigned, identified and predetermined  
20 worksite(s) and shall not work in a float capacity.

21           If Respondent is working or intends to work in excess of 40 hours per week, the  
22 Board may request documentation to determine whether there should be restrictions on the hours  
23 of work.

24           **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall  
25 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
26 than six months prior to the end of her probationary term.

27           Respondent shall obtain prior approval from the Board before enrolling in the  
28 course(s). Respondent shall submit to the Board the original transcripts or certificates of



1 completion for the above required course(s). The Board shall return the original documents to  
2 Respondent after photocopying them for its records.

3           11.     **Cost Recovery.** Respondent shall pay to the Board a portion of the costs  
4 associated with its investigation and enforcement pursuant to Business and Professions Code  
5 section 125.3 in the amount of \$5,000. Respondent shall be permitted to pay these costs in a  
6 payment plan approved by the Board, with payments to be completed no later than three months  
7 prior to the end of the probation term.

8           If Respondent has not complied with this condition during the probationary term,  
9 and Respondent has presented sufficient documentation of her good faith efforts to comply with  
10 this condition, and if no other conditions have been violated, the Board, in its discretion, may  
11 grant an extension of Respondent's probation period up to one year without further hearing in  
12 order to comply with this condition. During the one year extension, all original conditions of  
13 probation will apply.

14           12.     **Violation of Probation.** If Respondent violates the conditions of her  
15 probation, the Board after giving Respondent notice and an opportunity to be heard, may set  
16 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's  
17 license.

18           If during the period of probation, an accusation or petition to revoke probation has  
19 been filed against Respondent's license or the Attorney General's Office has been requested to  
20 prepare an accusation or petition to revoke probation against Respondent's license, the  
21 probationary period shall automatically be extended and shall not expire until the accusation or  
22 petition has been acted upon by the Board.

23           13.     **License Surrender.** During Respondent's term of probation, if she ceases  
24 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of  
25 probation, Respondent may surrender her license to the Board. The Board reserves the right to  
26 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to  
27 take any other action deemed appropriate and reasonable under the circumstances, without  
28 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent

1 will no longer be subject to the conditions of probation.

2               Surrender of Respondent's license shall be considered a disciplinary action and  
3 shall become a part of Respondent's license history with the Board. A registered nurse whose  
4 license has been surrendered may petition the Board for reinstatement no sooner than the  
5 following minimum periods from the effective date of the disciplinary decision:

6               (1)     Two years for reinstatement of a license that was surrendered for any  
7 reason other than a mental or physical illness; or

8               (2)     One year for a license surrendered for a mental or physical illness.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 9/14/07.

*Opal Joyce Musser*

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OPAL JOYCE MUSSER (Respondent)  
Respondent

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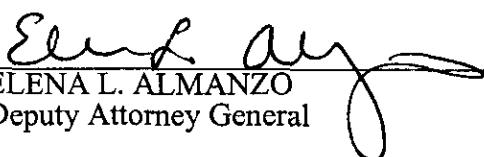
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 9/18/07

EDMUND G. BROWN JR., Attorney General  
of the State of California

ARTHUR D. TAGGART  
Supervising Deputy Attorney General

  
ELENA L. ALMANZO  
Deputy Attorney General  
Attorneys for Complainant

DOJ Matter ID: SA2007101662  
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10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. *2008-53*

15 **OPAL JOYCE MUSSER**  
3620 Portabello Drive  
16 Modesto, California 95356

**A C C U S A T I O N**

17 Registered Nurse License No. 222396

18 Respondent.  
19

20 Ruth Ann Terry, M.P.H, R.N ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the  
23 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
24 Affairs.

25 **License History**

26 2. On or about April 13, 1972, the Board issued Registered Nurse License  
27 Number 222396 ("license") to Opal Joyce Musser ("Respondent"). The license will expire on  
28 December 31, 2007, unless renewed.

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4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 2761 states, in pertinent part:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. Title 16, California Code of Regulations, section 1443, states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in section 1443.5.

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1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may  
3 request the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Incompetence)**

8 9. Respondent is subject to disciplinary action under Code section 2761,  
9 subdivision (a)(1), on the grounds of unprofessional conduct, in that on March 24, 2005, while  
10 on duty as a registered nurse at Hy-Lond Health Care in Modesto, California, and caring for  
11 Patient A, who had a history of pneumonia and respiratory failure, Respondent committed acts  
12 constituting incompetence, as defined in California Code of Regulations, section 1443, as  
13 follows:

- 14 a. Respondent failed to recognize a change of condition in the patient's vital  
15 signs.
- 16 b. Respondent failed to appropriately assess the patient's condition when the  
17 patient exhibited abnormal vital signs, resulting in the patient going into full respiratory  
18 failure.
- 19 c. Respondent failed to exercise basic nursing skills.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 10. Respondent is subject to disciplinary action under Code section 2761,  
23 subdivision (a), in that on March 24, 2005, while on duty as a registered nurse at Hy-Lond Health  
24 Care in Modesto, California, Respondent committed acts constituting unprofessional conduct, as  
25 set forth in paragraph 9, above.

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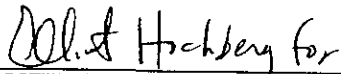
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 222396 issued to Opal Joyce Musser;
2. Ordering Opal Joyce Musser to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/17/07

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant